REMARKS/ARGUMENTS

Claims 1-5 and 10-12 were rejected and remain pending in the instant application. Claim 6-9 and 13-29 were previously cancelled without prejudice in response to the Requirement for Restriction/Election mailed July 16, 2009. Claims 2-5 and 10-11 are amended herein. All amendments to the claims are fully supported by the original disclosure, and no new matter is added.

Reconsideration of the rejections is respectfully requested.

Claim Objections

Applicants acknowledge the objections to claims 2-5 and 10 for lack of antecedent basis. Claims 2-5 and 10 are currently amended to correct the informalities listed on pages 2-3 of the Office action. The amendments to the claims are believed to obviate the objections. Therefore, withdrawal of the objections is respectfully requested.

Claim Rejections Under 35 USC § 112

Claims 4-5 and 10-12 were rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Claim 4 recites the apparatus of claim 1, "wherein said second group comprises an available discretionary update currently installed on the wireless computing apparatus." Claim 5 recites the apparatus of claim 1, "wherein said second group comprises an available discretionary update inapplicable to software currently installed on the wireless computing apparatus."

Support for these recitations is found at least in Figure 5 (e.g., 525); Figure 6 (e.g., 625 and 630); page 9, lines 11-25; and page 10, lines 16-23, as follows.

First, claims 4-5 depend from claim 1, which is directed to a wireless computing apparatus with "a memory comprising computer executable instructions which, upon execution are operative to cause the wireless computing apparatus to . . . determine that a *first group* of the available discretionary updates is *relevant* to the wireless computing apparatus, and that a *second group* of the available discretionary updates is *irrelevant* to the wireless computing apparatus . . . ."

Figure 5 shows that a client device 200 receives a catalog of available updates, along with any mandatory updates, from remote control/update server 150 (515 of Figure 5; see also pg. 9, lines 11-19). The term "relevant available updates" is described on pg. 9, lines 21-25 as follows (emphasis ours):

> The relevant available updates are those non-mandatory updates (i.e., critical updates and other updates) that *have not already been installed* on the client device 200 and for which the client device 200 has a use (e.g., that are *applicable to the currently installed operating system and/or versions of software* running on the client device 200).

In addition, the specification states on page 10, lines 14-16 that "the received catalog of available updates is *compared to the currently installed software on the client device 200*" (emphasis ours; see also 625 of Figure 6). The client device 200 then determines whether any available updates are still relevant (630 of Figure 6; pg. 10, lines 16-17). If it is determined that there are available updates that are still relevant to the client device, those relevant updates are depicted at the client device (pg. 10, lines 21-23).

Therefore, the disclosure readily conveys to persons having ordinary skill in the art that a non-relevant update may be a discretionary (non-mandatory) update previously or currently installed on the client device, and/or an update that is inapplicable to the currently installed operating system and/or versions of software running on the client device.

As previously presented, claim 10 recited a method of updating data on a wireless mobile device, the method comprising, in part, "determining by the wireless mobile device that a first group of the discretionary updates is compatible with, and is not currently installed on, the wireless computing apparatus, and that a second group of the available discretionary updates is incompatible with, or is currently installed on, the wireless computing apparatus. . . ." Claims 11-12 depend from claim 10 and incorporate its recitations.

While Applicants maintain that the above-cited passages and figures adequately disclose these features, claim 10 is nonetheless amended (without prejudice) in order to advance prosecution. Amended claim 10 now recites, in pertinent part, "determining by the wireless mobile device that a first group of the discretionary updates is not currently installed

on, and is applicable to software currently installed on, the wireless mobile device, and that a second group of the available discretionary updates is currently installed on, or is inapplicable to software currently installed on, the wireless mobile device . . . ." These amendments are fully supported at least in the passages and Figures cited above in reference to claims 4 and 5.

For at least the above reasons, Applicants respectfully submit that the features of claims 4, 5, and 10-12 are fully described in the specification as required under 35 U.S.C. § 112. Reconsideration and withdrawal of the rejections is therefore requested.

Claim Rejections Under 35 USC § 103

Claims 1-5 and 10-12 were rejected under 35 USC § 103(a) as allegedly being unpatentable over US Patent No. 6,820,259 to Kawamata et al. (hereinafter *Kawamata*) in view of US Pub. No. 2003/0022657 to Herschberg et al. (hereinafter *Herschberg*).

When viewed as a whole, as required by law, claim 1 recites a wireless computing apparatus that is equipped with an update functionality that includes the capability of "determining" from an update catalogue (provided with mandatory updates) having discretionary updates, "*that a first group of ... discretionary updates is relevant to the wireless computing apparatus, and that a second group of ... discretionary updates is irrelevant to the wireless computing apparatus.*" For reasons set forth below, Applicant respectfully submits that such a wireless computing apparatus – in particular, a wireless computing apparatus with such update capability – is not taught or suggested by the cited references.

Kawamata is directed to a software distribution system that includes a terminal apparatus having a reception unit for receiving a data group or a program group distributed from a satellite or a group distribution system, and an update sequence management unit. (See abstract). As conceded on page 6 of the Office Action, Kawamata does not disclose "the available updates comprising available discretionary updates," "determine that a first group of the available discretionary updates is relevant to the wireless computing apparatus, and that a second group of the available discretionary updates is irrelevant to the wireless computing apparatus," or "depict representations of the available discretionary updates of the

first group in a selectable manner to enable user control over installation of the relevant discretionary updates." Applicants further note that Kawamata also does not teach or suggest "receive, with the update catalog," [which comprises available *discretionary* updates] "mandatory updates," because Kawamata does not teach or suggest discretionary updates.

        Therefore, Kawamata does not teach or suggest the features of claim 1.

        Herschberg fails to remedy the deficiencies of Kawamata. Herschberg **teaches away** from the recitations of claim 1 for at least the reasons previously argued by Applicants (see Response filed March 16, 2010), as well as for the additional reasons described below.

        Herschberg teaches when a user attempts to log in to the server framework from a wireless device, the wireless device transmits a list of its resident downloaded applications to the server framework (paragraph [0009]). The server framework identifies downloadable applications that must, may, or may not be made available to the user (paragraph [0009]). The server framework 104 includes an application provisioning manager 312 (Fig. 3; paragraph [0083]). The application provisioning manager identifies applications with permission settings of "grant" that are compatible with the user's device and not currently resident on the device. The provisioning manager then transmits a list of those applications to the device via a wireless network (paragraph [0180]). Only those applications that are compatible with, and not already resident on, the wireless device are downloaded (see e.g., Abstract).

        On page 7 of the Office Action, Herschberg is asserted as teaching "determine that a first group of available discretionary updates (e.g., optional applications) is relevant (e.g., compatible) to the wireless device (106) . . . ." But Herschberg teaches that the administrator, not the wireless computing apparatus, makes such determinations. Paragraph [0086] discloses that the administrator assigns permissions defining the types of devices 106 that are compatible with a particular application. Further, paragraph [0086] explicitly states that by applying sets of permissions for each application that may be downloaded to a device 106, "the *system* is able to control application downloading so that users *do not receive applications which they do not need or for which they are not authorized*"(emphasis ours).

Likewise, on page 7 of the Office Action, Herschberg is asserted for teaching "and that a second group of the available discretionary updates is irrelevant (e.g., not compatible including permission deny/unauthorized application) to the wireless computing apparatus (106) . . . ." Again, Herschberg teaches that the system/administrator determines which optional applications are compatible with a wireless device 106 and which applications are to be made available to that user (paragraph [0086]). As described in the Abstract, "[a]n administration tool is preferably provided that permits *an administrator* to specify *whether an application is required, optional, or unauthorized* for individual users or user groups *and whether an application is compatible with a specific type of user device*." The system "also gives the user the opportunity to download any optional applications *that are compatible with the user's device*."

Thus, the wireless device of Herschberg does not determine that an available optional application is "relevant," because the wireless device receives only a list of those optional applications pre-determined by the system as compatible with, and authorized for, the wireless device. Therefore, Herschberg teaches away from the recitations of claim 1.

For at least the above reasons, claim 1 is allowable over the cited references under § 103(a).

Claim 10 recites subject matter substantially similar to that of amended claim 1, and is therefore allowable over the cited combination for at least the same reasons.

Claims 2-5 and 11-12 depend from claims 1 and 10, respectively, incorporating their recitations, and are thus allowable over the cited references for at least the same reasons.

Claims 2-5 and 11-12 are further allowable over the cited references for their additional recitations (below), which are not taught or suggested by the cited references:

- Claim 2: "the computer executable instructions further operative, upon execution, to cause the wireless computing apparatus to select a desired discretionary update from said first group; and to obtain said desired discretionary update."

- Claim 3: "the computer executable instructions further operative, upon execution, to cause the wireless computing apparatus to install said obtained discretionary update."

- Claim 4: "wherein said second group comprises an available discretionary update currently installed on the wireless computing apparatus."

- Claim 5: "wherein said second group comprises an available discretionary update inapplicable to software currently installed on the wireless computing apparatus."
- Claim 11: "wherein said determining comprises comparing, by the wireless mobile device, the update catalog to the software currently installed on the wireless mobile device, wherein the software is at least one of an operating system or an application."
- Claim 12: "wherein said determining comprises comparing, by the wireless mobile device, the update catalog to software currently installed on the wireless mobile device, wherein the software is at least one of an operating system or an application."

CONCLUSION

In view of the foregoing amendments and remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1542.

No extensions of time are believed to be required. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

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Respectfully submitted,
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Date: ___August 31, 2010___   By: /Jo Ann Schmidt/_____
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